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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JORDAN JOHN WALK, Derivatively on
Behalf of Nominal Defendant DRAFTKINGS
INC., F/K/A DIAMOND EAGLE
ACQUISITION CORP.,

Plaintiff,

v.

JASON ROBINS, HARRY EVANS SLOAN,
MATTHEW KALISH, PAUL LIBERMAN,
WOODROW H. LEVIN, SHALOM
MECKENZIE, JOCELYN MOORE, RYAN
R. MOORE, VALERIE MOSLEY, STEVEN
J. MURRAY, HANY M. NADA, JOHN S.
SALTER, MARNI M. WALDEN, JASON K.
PARK, JEFF SAGANSKY and ELI BAKE,

Defendants,

and,

DRAFTKINGS INC. F/K/A DIAMOND
EAGLE ACQUISITION CORP.,

Nominal Defendant.

Case No.:

VERIFIED SHAREHOLDER
DERIVATIVE COMPLAINT
AND DEMAND FOR TRIAL
BY JURY

Plaintiff Jordan John Walk ("Plaintiff"), by and through his undersigned attorneys, brings this derivative complaint for the benefit of nominal defendant DraftKings Inc. f/k/a Diamond Eagle Acquisition Corp. ("DraftKings" or the "Company"), against its Board of Directors (the "Board") and certain of its executive officers seeking to remedy defendants' breaches of fiduciary duties and violations of federal law. Plaintiff's allegations are based upon his personal knowledge as to himself and his own acts, and upon information and belief, developed from the investigation and analysis by

1 Plaintiff's counsel, including a review of publicly available information, including filings by
2 DraftKings with the U.S. Securities and Exchange Commission ("SEC"), press releases, news reports,
3 analyst reports, investor conference transcripts, publicly available filings in lawsuits, and matters of
4 public record.

5 **NATURE AND SUMMARY OF THE ACTION**

6 1. This is a shareholder derivative action that seeks to remedy wrongdoing committed by
7 DraftKings' directors and officers in their management and control of the Company from December 23,
8 2019 through June 15, 2021 ("Relevant Period").

9 2. DraftKings operates as a digital sports entertainment and gaming company in the U.S. It
10 operates through two segments: (1) Business-to-Consumer and (2) Business-to-Business. The
11 Company provides users with daily sports, sports betting, and iGaming opportunities. It is also
12 involved in the design, development, and licensing of sports betting and casino gaming platform
13 software for online and retail sportsbook, and casino gaming products. The Company distributes its
14 product offerings through various channels, including traditional websites, direct app downloads, and
15 direct-to-consumer digital platforms.

16 3. DraftKings was incorporated in Nevada as DEAC NV Merger Corp., a wholly owned
17 subsidiary of its legal predecessor, DEAC, a special purpose acquisition company, or SPAC. On April
18 23, 2020, DEAC consummated transactions contemplated by a Business Combination Agreement (the
19 "Business Combination") dated December 22, 2019, as amended on April 7, 2020, and, in connection
20 therewith: (i) DEAC merged with and into the Company, whereby the Company survived the merger
21 and became the successor issuer to DEAC; (ii) the Company changed its name to "DraftKings Inc.";
22 (iii) the Company acquired DraftKings Inc., a Delaware corporation ("Old DK"), by way of a merger;
23 and (iv) the Company acquired all of the issued and outstanding share capital of SBTech (Global)
24 Limited ("SBTech"). Upon consummation of the preceding transactions, Old DK and SBTech became
25 wholly owned subsidiaries of the Company.

26 4. Throughout the Relevant Period, Defendants made false and/or misleading statements
27 and/or failed to disclose that: (i) SBTech had a history of unlawful operations; (ii) accordingly,
28 DraftKings' merger with SBTech exposed the Company to dealings in black-market gaming; (iii) the

1 foregoing increased the Company's regulatory and criminal risks with respect to these transactions; (iv)
2 as a result of all the foregoing, the Company's revenues were, in part, derived from unlawful conduct
3 and thus unsustainable; (v) accordingly, the benefits of the Business Combination were overstated; and
4 (vi) as a result, the Company's public statements were materially false and misleading at all relevant
5 times.

6 5. On June 15, 2021, Hindenburg Research ("Hindenburg") published a report, alleging
7 that the Company's merger with SBTech exposed DraftKings to dealings in black-market gaming.
8 Citing "conversations with multiple former employees, a review of SEC and international filings, and
9 inspection of back-end infrastructure at illicit international gaming websites," Hindenburg alleged that
10 "SBTech has a long and ongoing record of operating in black markets," estimating that 50% of
11 SBTech's revenue is from markets where gambling is banned."

12 6. Following publication of the Hindenburg report, the Company's stock price fell \$2.11
13 per share, or 4.17%, to close at \$48.51 per share on June 15, 2021.

14 **JURISDICTION AND VENUE**

15 2. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 in that this
16 Complaint alleges a violation of federal law. This Court has supplemental jurisdiction over the state
17 law claims asserted herein pursuant to 28 U.S.C. § 1367(a). This action is not a collusive one to confer
18 jurisdiction on a court of the United States which it would not otherwise have.

19 3. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391 and 1401 because a
20 substantial portion of the transactions and wrongs complained of herein occurred in this District, and
21 Defendants have received substantial compensation in this district by engaging in numerous activities
22 that had an effect in this District.

23 **PARTIES**

24 **Plaintiff**

25 4. Plaintiff Jordan John Walk purchased shares of DraftKings stock and continues to hold
26 his DraftKings stock currently.

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1 **Nominal Defendant**

2 5. Nominal Defendant DraftKings is a Nevada corporation with principal executive offices
3 located at 222 Berkeley Street, 5th Floor, Boston, Massachusetts 02116.

4 **Director Defendants**

5 6. ***Defendant Jason D. Robins*** (“Robins”) has served as DraftKings’ Chief Executive
6 Officer (“CEO”) and Chairman of the Board since the consummation of the business combination. For
7 the fiscal year ended December 31, 2020 (the “2020 Fiscal Year”), Defendant Robins received
8 \$236,833,375 million in compensation from the Company, which was comprised of \$650,000 in salary,
9 \$2,980,000 in bonus, \$231,178,101 in stock awards, \$1,950,000 in nonequity incentive plan
10 compensation, and \$75,274 in all other compensation. For the fiscal year ended December 31, 2019
11 (the “2019 Fiscal Year”), Defendant Robins received \$4,439,689 in compensation from the Company,
12 which was comprised of \$400,000 in salary, \$3,239,689 in option awards, \$800,000 in non-equity
13 incentive plan compensation.

14 7. ***Defendant Harry Evans Sloan*** (“Sloan”) is the Vice Chairman of the Board. Defendant
15 Sloan was a founding investor of DEAC and has served as a director of DraftKings since the Merger.
16 Defendant Sloan also beneficially owned 2,742,130 shares of the Company’s Common Stock as of
17 March 1, 2021. For the 2020 Fiscal Year, Defendant Sloan received \$375,445 in compensation from
18 the Company, which was comprised entirely of stock awards.

19 8. ***Defendant Matthew Kalish*** (“Kalish”) is President of DraftKings North America and
20 has served as a director of DraftKings since the Merger. Defendant Kalish also served as a director of
21 Old DK from its inception until the Merger. For the 2020 Fiscal Year, Defendant Kalish received
22 \$197,235,333 in compensation from the Company and Old DK, which was comprised of \$425,000 in
23 salary, \$1,500,000 in bonus, \$194,210,935 in stock awards, \$1,062,500 in non-equity incentive plan
24 compensation, and \$36,898 in all other compensation. For the 2019 Fiscal Year, Defendant Kalish
25 received \$2,114,748 in compensation from Old DK, which was comprised of \$300,000 in salary,
26 \$1,326,348 in option awards, \$480,000 in non-equity incentive plan compensation, and \$8,400 in all
27 other compensation.

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1 9. During the Relevant Period, when the Company materially misstated information to the
 2 investing public to keep the stock price inflated, and before the scheme was exposed, Defendant Kalish
 3 sold 57,692 shares of common stock at an artificially inflated price for proceeds of \$3,110,175.

4 10. **Defendant Paul Liberman** (“Liberman”) is a cofounder of Old DK and currently serves
 5 as DraftKings’ President of Global Technology and Product. Additionally, he has served as a director
 6 since the Merger, during which time he also served as a member of the Compliance Committee. For
 7 the 2020 Fiscal Year, Defendant Liberman received \$197,220,479 in compensation from the Company
 8 and Old DK, which was comprised of \$425,000 in salary \$1,500,000 in bonus, \$194,210,935 in stock
 9 awards, \$1,062,500 in non-equity incentive plan compensation, and \$22,044 in all other compensation.
 10 For the 2019 Fiscal Year, Defendant Liberman received \$2,139,948 in compensation from Old DK,
 11 which was comprised of \$300,000 in salary, \$1,350,348 in option awards, \$480,000 in non-equity
 12 incentive plan compensation, and \$9,600 in all other compensation.

13 11. Further, during the Relevant Period, when the Company materially misstated
 14 information to the investing public to keep the stock price inflated, and before the scheme was exposed,
 15 Defendant Liberman sold 85,000 shares of Company stock for proceeds of \$4,574,700 at artificially
 16 inflated prices.

17 12. **Defendant Woodrow H. Levin** (“Levin”) has served as a director of DraftKings since
 18 the Merger and served as a director of Old DK from December 2013 to April 2020. For the 2020 Fiscal
 19 Year, Defendant Levin received \$375,893 in compensation from the Company, which was comprised
 20 entirely of stock awards.

21 13. **Defendant Shalom Meckenzie** (“Meckenzie”) is the founder of SBTech. Defendant
 22 MecKenzie served as a director of Old DK from December 2013 until April 2020 and has been a
 23 director of DraftKings since the Merger. For the 2020 Fiscal Year, Defendant Meckenzie received
 24 \$373,618 in compensation from the Company, which consisted entirely of stock awards. During the
 25 Relevant Period, when the Company materially misstated information to the investing public to keep
 26 the stock price inflated, and before the scheme was exposed, Defendant Meckenzie sold on October 9,
 27 2020, 6,949,088 shares of Company stock for proceeds of \$353,222,143 and on January 21, 2021,
 28 660,000 shares of Company stock for proceeds of \$34,181,400 at artificially inflated prices.

1 14. **Defendant Jocelyn Moore** (“J. Moore”) has served as a director of DraftKings since her
2 appointment on September 23, 2020. Defendant J. Moore joined the Compliance Committee after the
3 2021 Annual Meeting. For the 2020 Fiscal Year, Defendant J. Moore received \$199,979 in
4 compensation from the Company, which was comprised entirely of stock awards.

5 15. **Defendant Ryan R. Moore** (“R. Moore”) served as a director of Old DK from February
6 2012 until April 2020 and has been a director of DraftKings’ Board since the Merger. For the 2020
7 Fiscal Year, Defendant R. Moore received \$376,790 in compensation from the Company, which was
8 comprised entirely of stock awards.

9 16. During the Relevant Period, when the Company materially misstated information to the
10 investing public to keep the stock price inflated, and before the scheme was exposed, Defendant R.
11 Moore sold 1,000,000 shares of Company stock for proceeds of \$50,830,000 at artificially inflated
12 prices.

13 17. **Defendant Valerie Mosley** (“Mosley”) has served as a director of DraftKings since her
14 appointment on September 23, 2020, when she joined the Audit Committee. For the 2020 Fiscal Year,
15 Defendant Mosley received \$199,979 in compensation from the Company, which was comprised
16 entirely of stock awards.

17 18. **Defendant Steven J. Murray** (“Murray”) served as a director of Old DK from August
18 2016 until April 2020 and has been a director of DraftKings and a member of the Company’s Audit
19 Committee since the Merger. For the 2020 Fiscal Year, Defendant Murray received \$378,136 in
20 compensation from the Company, which was comprised entirely of stock awards.

21 19. During the Relevant Period, when the Company materially misstated information to the
22 investing public to keep the stock price inflated, and before the scheme was exposed, Defendant
23 Murray sold 1,545,924 shares of Company stock for proceeds of \$78,579,316 at artificially inflated
24 prices.

25 20. **Defendant Hany M. Nada** (“Nada”) served as a director of Old DK from August 2016
26 until April 2020 and has been a director of DraftKings and a member of the Company’s Audit
27 Committee since the Merger. For the 2020 Fiscal Year, Defendant Nada received \$394,656 in

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1 compensation from the Company, which was comprised of \$378,585 in stock awards and \$16,071 in all
2 other compensation.

3 21. During the Relevant Period, when the Company materially misstated information to the
4 investing public to keep the stock price inflated, and before the scheme was exposed, Defendant Nada
5 sold 946,712 shares of Company stock for proceeds of \$48,121,370 at artificially inflated prices.

6 22. **Defendant John S. Salter** (“Salter”) served as a director of Old DK from August 2014
7 until April 2020 and has been a director of DraftKings and a member of the Company’s Compliance
8 Committee since the Merger. For the 2020 Fiscal Year, Defendant Salter received \$389,836 in
9 compensation from the Company, which was comprised of \$376,342 in stock awards and \$13,494 in all
10 other compensation.

11 23. During the Relevant Period, when the Company materially misstated information to the
12 investing public to keep the stock price inflated, and before the scheme was exposed, Defendant Salter
13 sold 4,972,572 shares of Company stock for proceeds of \$252,755,834 at artificially inflated prices.

14 24. **Defendant Marni M. Walden** (“Walden”) has been a director of DraftKings and a
15 member of the Company’s Compliance Committee since the Merger. For the 2020 Fiscal Year,
16 Defendant Walden received \$375,445 in compensation from the Company, which was comprised
17 entirely of stock awards.

18 25. Defendants Robins, Sloan, Kalish, Liberman, Levin, Meckenzie, J. Moore, R. Moore,
19 Mosley, Murray, Nada, Salter and Walden are herein referred to as the “Director Defendants.” Because
20 of their positions with the Company, they possessed the power and authority to control the contents of
21 the Company’s reports to the SEC, press releases and presentations to securities analysts, money and
22 portfolio managers and institutional investors, *i.e.*, the market. The Director Defendants were provided
23 with copies of the Company’s reports and press releases alleged herein to be misleading prior to, or
24 shortly after, their issuance and had the ability and opportunity to prevent their issuance or cause them
25 to be corrected. Because of their positions and access to material non-public information available to
26 them, the Director Defendants knew that the adverse facts specified herein had not been disclosed to,
27 and were being concealed from, the public, and that the positive representations which were being
28 made were then materially false.

Other Defendants

26. ***Defendant Jason K. Park*** (“Park”) has served as DraftKings’ Chief Financial Officer (“CFO”) since the consummation of the Business Combination.

27. ***Defendant Jeff Sagansky*** (“Sagansky”) served as DEAC’s CEO and Chairman until the consummation of the Business Combination.

28. ***Defendant Eli Baker*** (“Baker”) served as DEAC’s CFO and President until the consummation of the Business Combination.

29. The Director Defendants and Defendants Park, Sagansky and Baker are collectively referred to herein as “Defendants”.

THE AUDIT COMMITTEE CHARTER

30. The Audit Committee Charter requires that the Audit Committee oversee significant financial reporting issues and internal audit controls and procedures. The Audit Committee Charter provides:

The Audit Committee shall have the duty and power to advise management, the internal auditing department and the independent auditors that they are expected to provide to the Audit Committee a timely analysis of significant financial reporting issues and practices and significant internal audit controls and procedures.

31. Among other things, the Audit Committee Charter tasks the Audit Committee with discussing with independent auditors and management: (1) “the quality of the financial statements,” (2) “the clarity and adequacy of the Corporation’s financial disclosures,” (3) “the adequacy of the Corporation’s system of internal accounting controls,” and (4) “the performance of the independent auditors.”

32. The Audit Committee Charter requires the Audit Committee to closely review quarterly and annual reports:

The Audit Committee shall review any other financial statements or reports, as requested by management or determined by the Audit Committee, which are required to be filed with any Federal, State or local regulatory agency prior to filing with the appropriate regulatory body. As a part of such review, the following illustrates, but is not an exhaustive list of, the topics which may be covered: (a) the accounting principles employed in reporting any large or unusual transactions and the possible need to make specific disclosures of material developments, (b) developments in accounting policies and procedures since the previous filing of such financial statement or report and the effect of these developments may have on the Corporation’s financial reporting, and (c) significant fluctuations in financial statement balances, ratios or statistics.

1 33. The Audit Committee Charter also requires that the Audit Committee perform the
2 following functions:

- 3 (a) conduct or authorize investigations into any matters within the Audit
4 Committee's scope of responsibilities. The Audit Committee shall be
5 empowered to retain independent counsel and other professionals to assist in
6 the conduct of any investigation in consultation with the Chief Legal Officer
7 of the Corporation;
- 8 (b) ***review legal and regulatory matters that may have a material impact on the***
9 ***financial statements, related company compliance policies, and programs***
10 ***and reports received from regulators;***
- 11 (c) establish procedures for the (i) receipt, retention, and treatment of complaints
12 received by the Corporation regarding accounting, internal accounting
13 controls, or auditing matters and (ii) the confidential, anonymous submission
14 by employees of the Corporation of concerns regarding questionable
15 accounting or auditing matters;
- 16 (d) ***discuss the Corporation's policies with respect to risk assessment and risk***
17 ***management, and review contingent liabilities and risks that may be***
18 ***material to the Corporation;***
- 19 (e) prepare a report each year for inclusion in the Corporation's proxy statement;
- 20 (f) review and discuss earnings press releases prior to public disclosure; and (g)
21 review, approve, ratify or rescind related person transactions pursuant to the
22 Corporation's Related Person Transactions Policy. [Emphasis added].

23 34. In violation of the Audit Committee Charter, the Audit Committee failed to conduct
24 oversight of the Company's financial statements, the performance of the Company's internal audit
25 function and independent auditors, and the Company's compliance with legal and regulatory
26 requirements. As a result, the Company continued to engage in the Illicit Operations.

27 35. Defendants violated the Code of Ethics, the Code, the Compliance Committee Charter,
28 and the Audit Committee Charter by engaging in or permitting the scheme to issue materially false and
misleading statements to the public, including in the Company's SEC filings, and by facilitating and
disguising the violations of law, including breaches of fiduciary duty, waste of corporate assets, unjust
enrichment, abuse of control, gross mismanagement, violations of the Exchange Act, and failing to
report the same. Moreover, seven of the Defendants violated the Code by selling Company shares at
inflated prices for aggregate proceeds in excess of \$825 million

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THE COMPLIANCE COMMITTEE CHARTER

36. The Company's Compliance Committee Charter, adopted contemporaneously with the consummation of the Merger, provides:

The Committee, to the extent the Board deems necessary or appropriate, shall have the full power and authority to carry out the following primary responsibilities or to delegate such power and authority to one or more subcommittees of the Committee:

1. *Laws and Regulations Review. Identify, review and analyze non-financial laws and regulations applicable to the Corporation and its business, and identify, review and analyze risk factors with regard to such laws and regulations that may impact the Corporation or its business. The Committee shall also have the* primary responsibility of reviewing, evaluating and recommending actions, policies or procedures to the Board that will help the Corporation remain in compliance with such laws and regulations. The Committee shall also have the primary responsibility of reviewing and evaluating the Corporation's current and prospective compliance efforts.
2. *Compliance Programs and Monitoring.* Monitor the Corporation's efforts to implement compliance programs, policies and procedures that comply with local, state and federal laws, regulations and guidelines, respond to various compliance and regulatory risks facing the Corporation and support lawful and ethical business conduct by the Corporation's employees.
3. *Risk Area Review. Review significant non-financial compliance risk areas, as identified by management, and the steps management has taken to monitor, control and report such compliance risk areas.*
4. *Program Assessment.* Discuss with management on a periodic basis the adequacy and effectiveness of the Corporation's policies and procedures to assess, monitor, and manage non-financial compliance business risk, and legal, ethical and regulatory compliance programs (the "Programs").
5. *Programs Assessment.* Monitor compliance with the Programs, authorize waivers of the Programs in accordance with the terms thereof, investigate any alleged breach or violation of the Programs, enforce the provisions of the Programs and review the Programs periodically and recommend changes, if any, to the Board for approval.
6. *Noncompliance Investigation.* Oversee the investigation of, and request the investigation of, any significant instances of noncompliance with laws or the Corporation's compliance programs, policies or procedures, or potential compliance violations that are reported to the Committee.
7. *Procedure Review.* Review the Corporation's procedures for the receipt, retention and treatment of complaints received by the Corporation regarding nonfinancial compliance matters and for the confidential, anonymous submission by employees of the Corporation of concerns regarding questionable non-financial compliance matters.
8. *Reporting to the Board.* The Committee, through the Chairperson, shall report at least annually to the Board, on the Committee's activities, findings and recommendations, including the results of any evaluations.

1 9. *Charter Review.* Review the Committee’s Charter from time to time and
2 recommend any proposed changes to the Board.

3 10. *Additional Duties.* Perform any other duties or responsibilities expressly
4 delegated to the Committee by the Board from time to time. [Emphasis added].

5 37. In violation of the Compliance Committee Charter, the Compliance Committee failed to
6 ensure that the Company’s SBTech subsidiary was acting in compliance with applicable laws, and
7 instead allowed SBTech to continue engaging in the Illicit Operations, particularly through its
8 “distributor” entity BTi/CoreTech. To the extent the Board did not deem it “necessary or appropriate”
9 to grant the Compliance Committee full exercise of the powers enumerated in the Compliance
10 Committee Charter, the violations of the Compliance Committee Charter alleged herein are attributable
11 to the Board, as well.

12 THE COMPANY’S CODE

13 38. The Company’s Code, adopted contemporaneously with the consummation of the
14 Merger, states that “each of our directors, officers and other employees are bound by this Code of
15 Business Ethics.” It states:

16 Each person agrees that he or she will:

- 17 • Engage in honest and ethical conduct, including the ethical handling of actual
18 or apparent conflicts of interest between personal and professional
19 relationships;
- 20 • Produce full, fair, accurate, timely and understandable disclosure in reports
21 and documents that we file with or submit to the Securities and Exchange
22 Commission and in other public communications we make;
- 23 • Comply with applicable governmental laws, rules and regulations; and
- 24 • Promptly report any violations of this Code of Business Ethics to our Chief
25 Legal Officer or Audit Committee. [Emphasis added].

26 39. Under the heading “Honest and Ethical Conduct,” the Code provides that each director,
27 officer, and employee must “observe both the form and spirit of laws and governmental rules and
28 regulations and accounting standards; and adhere to a high standard of business ethics.”

29 40. Under the heading “Disclosure,” the Code provides:

30 Each director, officer or employee, to the extent involved in the Company’s
31 disclosure process, including without limitation the Senior Financial Officers, must:

- 1 • familiarize himself or herself with the disclosure requirements applicable to
2 the Company as well as the business and financial operations of the
3 Company; and
- 4 • ***not knowingly misrepresent, or cause others to misrepresent, facts about the
5 Company to others, whether within or outside the Company, including to
6 the Company's independent auditors, governmental regulators and self-
7 regulatory organizations.*** [Emphasis added].

8 41. Under the heading "Compliance," the Code provides:

9 It is the Company's policy to comply with all applicable laws, rules and regulations.
10 It is the personal responsibility of each employee, officer and director to adhere to
11 the standards and restrictions imposed by those laws, rules and regulations in the
12 performance of their duties for the Company, ***including those relating to accounting
13 and auditing matters and insider trading.***

14 ***Generally, it is against Company policy for any individual to profit from
15 undisclosed information relating to the Company or any other company in
16 violation of insider trading or other laws. Anyone who is aware of material
17 nonpublic information relating to the Company, our customers, or other
18 companies may not use the information to purchase or sell securities in violation
19 of the federal securities laws.*** [Emphasis added].

20 42. In violation of the Code's provisions concerning honest and ethical conduct, disclosure,
21 and compliance, the Company's directors allowed SBTech to continue to engage in the Illicit
22 Operations through its relationship with BTi/CoreTech, and they failed to disclose the failure of the
23 Company's compliance policies and resulting unlawful conduct to the Company's shareholders and the
24 investing public.

25 **BACKGROUND**

26 43. Defendants caused the Company's predecessor, Old DK, and DEAC to merge with
27 SBTech, despite SBTech's long and ongoing record of operating unlawfully in markets where online
28 gambling is restricted (the "Illicit Operations") and failed to ensure the cessation or disclosure of the
Illicit Operations following the Merger. In addition to engaging in or causing the Company to engage
in the Illicit Operations, Defendants made or caused the Company to make materially false and/or
misleading statements that failed to disclose the Illicit Operations and the heightened risks the
Company faced as a result of SBTech's engaging in the Illicit Operations.

44. Prior to the Merger, DEAC was a SPAC, also known as a "blank check company,"
created for the purpose of acquiring a private company and taking it public through a merger. DEAC

consummated an initial public offering on May 14, 2019. Old DK was a digital sports entertainment and gaming company known for its daily fantasy sports and mobile sports betting platforms. SBTech, a company limited by shares, incorporated in Gibraltar and continued as a company under the Isle of Man Companies Act 2006 and based in Bulgaria, was a global provider of business-to-business technology for sports betting, trading services, and marketing and bonus tools for sports betting and online gaming brands.

FALSE AND MISLEADING STATEMENTS

45. The Relevant Period begins on December 23, 2019, when the Company issued a press release, filed by DEAC on a Current Report on Form 8-K with the SEC that same day, announcing the Business Combination. That press release made the following representations regarding SBTech:

SBTech Highlights

- SBTech is a premier global full-service B2B turnkey technology provider with omni-channel sports betting solutions, trading services, and marketing and bonus tools powering some of the world's most popular sports betting and online gaming brands.
- 50+ partners in 20+ regulated markets and jurisdictions including Czech Republic, Denmark, Ireland, Italy, Mexico, Portugal, Spain, Sweden, and U.K. and Arkansas, Indiana, Mississippi, New Jersey, Oregon and Pennsylvania in United States.
- Awarded exclusive contract offering mobile and retail sports betting for the Oregon state lottery with their Oregon Lottery Scoreboard brand.

"The combination of DraftKings and SBTech brings together two tech-native companies with the customer at their cores," said Gavin Isaacs, SBTech's Chairman. "SBTech will maintain its core business and continue its B2B focus. We are excited about the opportunity to join a company with a similar innovation DNA and create a unique and differentiated player in global sports betting and online gaming."

46. That same day, DEAC filed a Current Report on Form 8-K with the SEC, appended to which as an exhibit was the transcript of an investor call to discuss the Business Combination. During the call, Defendant Robins touted SBTech:

Number three, the combination with SBTech, who is the leading B2B innovator in sports technology, powering some of the world's most popular sports betting and online gaming brands, creates a unique, vertically integrated, customer focused U.S. market opportunity.

* * *

1 Layering in SBTech, the industry leader in B2B sport's technology, strengthens us
 2 and creates a unique, vertically integrated company in the category. solution. They
 3 have a proven track record of outperformance versus industry peers on both growth
 and margin. The *company has a global footprint with material new opportunities*
emerging in the U.S., Europe, Africa, Latin America, and Asia. [Emphasis added].

4 47. On January 13, 2020, DEAC filed a Current Report on Form 8-K with the SEC,
 5 appended to which as an exhibit was an investor presentation (the "January 2020 Investor
 6 Presentation"). The January 2020 Investor Presentation described DraftKings and SBTech as a "fully
 7 integrated platform that enables DraftKings' mission," and touted SBTech as a "leader in online
 8 gaming technology" that is "[p]ositioned as one of the fastest growing tech firms within sports betting,
 9 with an *omni-channel solution*," and has a "[p]roven track record of outperformance vs. industry
 10 peers on growth and margin" and a "[g]rowing global footprint with material new opportunities
 11 emerging in Europe, U.S., Africa, Latin America, and Asia." (Emphasis in original).

12 48. On March 5, 2020, DEAC filed a Current Report on Form 8-K with the SEC, appended
 13 to which as an exhibit was the transcript of an interview given by Defendant Robins on March 3, 2020
 14 at the Morgan Stanley Technology, Media & Telecom Conference. During the interview, Defendant
 15 Robins stated:

16 I think for us there were really three objectives that we were trying to solve for. And
 17 the way we approach anything at the company, including something like how do we
 18 capitalize the business, what's the best financing route, is we start with what are we
 19 trying to accomplish and then what is the most effective way to accomplish that.
 20 Seems simple enough. So the three things we were trying to accomplish were we
 had identified this company, SBTech, which we felt was a really important part of
 the full product that we needed to build out and we thought this was a great
 opportunity to really add the one piece we thought we were missing on the
 technology and product side.

21 49. On March 12, 2020, the Company issued a press release reporting its full year 2019
 22 results:

23 "This was a transformative year for DraftKings. We further established ourselves as
 24 a leader in the rapidly evolving digital sports and gaming industry, launched products
 25 in six new states and announced a business combination with Diamond Eagle and
 SBTech to become a public company," said Jason Robins, co-founder and Chief
 Executive Officer of DraftKings. "I am excited to have closed out 2019, having
 26 achieved net revenue of \$323M for the full year, a 43% increase over 2018."

27 * * *

28 Upon close of the business combination, DraftKings will become the only vertically-
 integrated pure-play sports betting and online gaming company based in the United
 States. Through the business combination, DraftKings expects to realize synergies by
 transitioning its risk and trading sports betting platform to SBTech's, instead of

1 relying on a third-party platform. In addition to reducing costs, DraftKings will
2 control its backend system and product roadmap, differentiating the company from
3 other U.S. operators and giving it the ability to tailor its sports betting product to U.S.
sports and users.

4 50. On April 23, 2020, the Company issued a press release entitled “DraftKings Closes
5 Business Combination and Will Begin Trading on the Nasdaq Stock Exchange.” The press release
6 stated:

7 “Today marks another milestone for DraftKings and the future of digital sports
8 entertainment and gaming in America,” said Jason Robins, co-founder and CEO of
9 DraftKings. “By bringing together our leading consumer brand, data science
10 expertise and industry-leading products with SBTech’s proven technology platform,
11 we will accelerate our innovation, growth and scale. I am confident that the new
12 DraftKings will progress our goal of offering the best, most innovative sports and
13 gaming products to our customers.”

14 51. On April 27, 2020, the Company filed a Prospectus on Form 424B3 with the SEC (the
15 “April 27, 2020 Prospectus”). The April 27, 2020 Prospectus stated:

16 Following the consummation of the Business Combination with SBTech, we also
17 plan to expand our offerings to begin serving other operators within our industry. We
18 will begin by migrating DraftKings’ own consumer offering onto SBTech’s
19 proprietary sports betting platform over time, allowing us to become a fully vertically
20 integrated sports betting operator. We will also leverage the combined entity’s shared
21 infrastructure to service adjacent branded operators in both the United States and
22 internationally at greater scale. This could include online sportsbooks, retail
sportsbooks, iGaming operators, as well as governments or lotteries seeking to
manage their own sportsbook or iGaming offerings. SBTech offers one of the
industry’s most robust platform solutions to satisfy its customers’ sports betting
technology needs, ranging from trading and risk management to platform services to
support reporting, customer management and regulatory reporting requirements.
SBTech competes with a variety of other sports betting technology providers and
differentiates itself through this full suite platform offering. In addition, SBTech
offers a leading iGaming solution via its proprietary platform with integrations to
third-party iGaming suppliers.

23 52. Further, the April 27, 2020 Prospectus listed as one of the Company’s “Core Operating
24 Principles”:

25 Act responsibly. We are committed to industry-leading responsible gaming practices
26 and seek to provide our users with the resources and services they need to play
27 responsibly. We have invested in processes that identify and protect vulnerable
28 users. Specifically, we created an internal, independent “Game Integrity and Ethics
Team” that actively monitors for any indication of activities that may violate current
regulations governing us, our own terms of use or our “Community Guidelines.”
This team oversees a framework for our user community to follow in determining

1 when a user may need assistance. With our focus on fair and responsible gaming
2 along with user protection and data security, users have come to know and trust our
gaming platform.

3 53. With respect to compliance, the April 27, 2020 Prospectus stated:

4 Underpinning our regulatory access is our DraftKings platform that allows us to
5 efficiently and safely scale our product offerings into multiple jurisdictions. We have
6 developed our DraftKings platform from the ground up to meet the needs of the
unique regulatory environment that the United States offers, while maintaining ease
7 of use for our users. We provide a single experience for login, verification and
wallet.

8 SBTech's platform has been built from the ground up to meet the needs of differing
9 regulatory regimes, including configurable regulatory and responsible gaming
controls such as responsible gaming tests, operator alerts on player behavior, deposit
10 limits, betting limits, loss limits, timeout facilities, session limits, reality checks,
balance thresholds and intended gaming amounts. These features allow the operators'
11 customers full control of their gaming to allow them to play responsibly.

12 54. On May 13, 2020, the Company filed a Prospectus on Form 424B3 with the SEC (the
13 "May 13, 2020 Prospectus"). The May 13, 2020 Prospectus contained substantively similar statements
14 as those included in the April 27, 2020 Prospectus.

15 55. On May 15, 2020, the Company issued a press release reporting its Q1 2020 results:

16 Through its recent business combination, DraftKings has created the only vertically
integrated sports betting company based in the United States.

17 "We are uniquely positioned at the intersection of digital sports entertainment and
18 gaming in a rapidly growing industry," said Jason Robins, DraftKings co-founder,
CEO and Chairman of the Board. "DraftKings recorded standalone Q1 year over
19 year revenue growth of 30% despite the effects of COVID-19. Additionally, the
engagement we continue to see from our customers validates the connection they
20 have with our content, their passion for our products and most importantly their
loyalty to our brand."
21

22 56. That same day, the Company hosted an earnings call with investors and analysts to
23 discuss the Company's Q1 2020 results (the "Q1 2020 Earnings Call"). During the scripted portion of
24 the Q1 2020 Earnings Call, Defendant Robins stated: "[t]hrough the acquisition of SBTech, we have
25 created the only vertically integrated sports betting company in the U.S., enabling us to be the product
26 innovation leader for American sports, with a clear focus on the American sports fan." Further, during
27 the scripted portion of the Q1 2020 Earnings Call, Defendant Park stated:

28 ///

1 Starting with Old DraftKings, despite COVID we generated \$89 million of net
 2 revenue in the quarter, which is an increase of 30% versus prior year. Notably pre-
 3 COVID prior to March 11, our revenue was up 60% versus prior year. These results
 4 are due to our strategy of launching in new states, as well as growing revenue in
 existing states. In this quarter, we were live in five new states for online sports
 betting, versus the first quarter of 2019, Indiana, Iowa, New Hampshire,
 Pennsylvania, and West Virginia.

5 * * *

6 Now turning to SBTech. Old SBTech revenue generated €22.6 million, an increase
 7 of 3% versus Q1 2019. Notably, pre-COVID, prior to March 11, our revenue was up
 8 19% versus prior year. Adjusted EBITDA was negative €851,000 versus prior year
 9 of positive €4.3 million. SBTech was well on track to achieve positive EBITDA for
 the quarter, until COVID hit. And we anticipate to return to profitability once the
 major sports resume.

10 57. On June 22, 2020, DraftKings filed a Prospectus on Form 424B4 with the SEC (the
 11 “June 22, 2020 Prospectus”). The June 22, 2020 Prospectus contained substantively similar statements
 12 as those included in the April 27, 2020 Prospectus.

13 58. On August 14, 2020, the Company issued a press release entitled “DraftKings Reports
 14 Strong Q2 Revenue Despite Limited Sports Calendar.” The press release stated:

15 DraftKings [. . .] today reported financial results for the second quarter of 2020. For
 16 the three months ended June 30, 2020, DraftKings reported GAAP revenue of \$71
 17 million compared to \$57 million during the same period in 2019. On a pro forma
 18 basis, including the effect of the Company’s business combination with SBTech
 19 (Global) Limited and Diamond Eagle Acquisition Corp. as if it had been completed
 on January 1, 2019, revenue would have been \$75 million in the second quarter of
 2020, compared to \$83 million during the same period in 2019. DraftKings ended the
 second quarter of 2020 with over \$1.2 billion in cash and no debt on its balance
 sheet.

20 “We believe that the best product will ultimately win with the American consumer,”
 21 said Jason Robins, DraftKings Co-Founder, CEO and Chairman of the Board. “As a
 22 technology first organization, we will continue to focus on bringing new and
 innovative products to market that strengthen our engagement with customers and
 maintain our competitive differentiation.”

23
 24 59. That same day, the Company hosted an earnings call with investors and analysts to
 25 discuss the Company’s Q2 2020 results (the “Q2 2020 Earnings Call”). During the scripted portion of
 26 the Q2 2020 Earnings Call, Defendant Robins stated:

27 We had a strong second quarter given the limited sports calendar with second quarter
 28 pro forma revenue of \$75 million. As sports have started to return, we saw revenue
 improve sequentially each month in the quarter, with June revenue increasing 20%

1 year-over-year on a pro forma basis. This strong overall results and improvement are
 2 due to our product innovation, our entry into new jurisdiction, and pent-up demand
 3 for sports betting as Live Sports like Golf, European Soccer, NASCAR and UFC
 started to return.

4 60. On October 8, 2020, the Company filed a Prospectus on Form 424B4 with the SEC (the
 5 “October 8, 2020 Prospectus”). The October 8, 2020 Prospectus contained substantively similar
 6 statements as those included in the April 27, 2020 Prospectus.

7 61. On November 13, 2020, the Company issued a press release reporting the Company’s
 8 Q3 2020 results and raising its 2020 revenue guidance. The press release stated:

9 DraftKings [. . .] today reported its financial results for the third quarter of 2020. For
 10 the three months ended September 30, 2020, DraftKings reported revenue of \$133
 11 million, an increase of 98% compared to \$67 million during the same period in 2019.
 After giving pro forma effect to the business combination with SBTech (Global)
 Limited and Diamond Eagle Acquisition Corp., as if it had occurred on January 1,
 2019, revenue grew 42% compared to the three months ended September 30, 2019.

12 “The resumption of major sports such as the NBA, MLB and the NHL in the third
 13 quarter, as well as the start of the NFL season, generated tremendous customer
 14 engagement,” said Jason Robins, DraftKings’ co-founder, CEO and Chairman of the
 15 Board. “In addition to our year-over-year pro forma revenue growth of 42%,
 DraftKings recorded an increase in monthly unique payers of 64% to over 1 million,
 demonstrating the effectiveness of our data-driven sales and marketing approach.

16 Our product offerings and scalable platform provide a distinctive and personalized
 17 experience for customers across the ten states where we operate mobile sports betting
 18 today, and we look forward to entering additional jurisdictions at the earliest
 opportunity.”

19 62. That same day, the Company hosted an earnings call with investors and analysts to
 20 discuss the Company’s Q3 2020 results (the “Q3 2020 Earnings Call”). During the scripted portion of
 21 the Q3 2020 Earnings Call, Defendant Robins stated:

22 DraftKings had a very productive third quarter on a number of different fronts. First,
 23 our Q3 performance confirms what we foreshadowed on our previous earnings call.
 24 The return on major sports has generated tremendous customer engagement. Third
 25 quarter revenue of \$133 million was at the high end of the range we outlined in our
 recent S-1 and grew 42% year-over-year. In Q3, we also had more than 1 million
 monthly unique payers, which means the average for the month of July, August and
 September was greater than 1 million.

26 * * *

27 We continue to be very excited with the products and technology investments we're
 28 making as well as with our progress on the technology migration and business
 integration of SBTech.

* * *

As a reminder, with the acquisition of SBTech, we now have almost 1,100 engineers worldwide dedicated to creating best-in-class technology and games and experiences for our users.

63. On February 26, 2021, the Company filed an Annual Report on Form 10-K with the SEC, reporting the Company's financial and operating results for the quarter and year ended December 31, 2020 (the "2020 10-K"). The 2020 10-K also touted SBTech's business:

B2B Business Marketing - Our core B2B marketing strategy is centered around attending and exhibiting at major trade shows around the world. SBTech's trade show marketing is supplemented with digital and offline marketing campaigns in leading industry publications, websites, regular media pieces and participation on industry panels. SBTech's reputation and customer testimonials also assist in its marketing and business efforts. (Emphasis in original).

64. The 2020 10-K also touted the Company's compliance program:

We have developed and implemented an internal compliance program to help ensure that we comply with legal and regulatory requirements imposed on us in connection with our DFS, Sportsbook and iGaming activities. Our compliance program focuses on, among other things, reducing and managing problematic gaming and providing tools to assist users in making educated choices related to gaming activities.

SBTech offerings have been built from the ground up to meet the needs of differing regulatory regimes, including configurable regulatory and responsible gaming controls such as responsible gaming tests, operator alerts on player behavior, deposit limits, betting limits, loss limits, timeout facilities, session limits, reality checks, balance thresholds and intended gaming amounts. These features allow the operators' customers full control of their gaming to allow them to play responsibly.

65. Appended to the 2020 10-K as exhibits were signed certifications pursuant to the Sarbanes-Oxley Act of 2002 by Defendants Robins and Park, attesting that "[t]he information contained in the [2020 10-K] fairly presents, in all material respects, the financial condition and results of operations of the Company."

66. Corresponding with the 2020 10-K, the Company issued a press release announcing the Company's fourth quarter and full year 2020 results and raising its 2021 revenue guidance. The press release stated:

For the three months ended December 31, 2020, DraftKings reported revenue of \$322 million, an increase of 146% compared to \$131 million during the same period in 2019. After giving pro forma effect to the business combination with SBTech (Global) Limited ("SBTech") and Diamond Eagle Acquisition Corp. which was

1 completed on April 23, 2020, as if it had occurred on January 1, 2019, revenue grew
2 98% compared to the three months ended December 31, 2019.

3 “With a favorable fourth quarter sports calendar and strong marketing execution,
4 DraftKings was able to generate tremendous customer acquisition and engagement
5 that propelled us to \$322 million in fourth quarter revenue, a 98% year over year
6 increase,” said Jason Robins, DraftKings’ co-founder, CEO and Chairman of the
7 Board. “In the fourth quarter of 2020, we saw MUPs increase 44% to 1.5 million and
8 ARPMUP increase 55% to \$65. We are raising our revenue outlook for 2021 due to
9 our expectation for continued growth, the outperformance of our core business and
10 newly launched states that were not included in our previous guidance.”

11 67. That same day, the Company hosted an earnings call with investors and analysts to
12 discuss the Company’s Q4 2020 results (the “Q4 2020 Earnings Call”). During the scripted portion of
13 the Q4 2020 Earnings Call, Defendant Robins stated:

14 Our list of accomplishments in 2020 is impressive. We completed the business
15 combination with SBTech and became a publicly traded company in April. We are
16 well on our way to completing the integration of the two companies from a team
17 organization and business standpoint, and are progressing with the migration to our
18 own in-house sports betting engine, which we expect will be complete by the end of
19 the third quarter in 2021.

20 * * *

21 We exceeded our expectations in 2020. Pro forma revenue grew nearly 50% to \$644
22 million versus \$432 million last year. Both MUPs and ARPMUP grew 29% in 2020.
23 We had a strong close to the year with Q4 revenue growing almost 100% year-over-
24 year, and MUPs and ARPMUP growing 44% and 55%, respectively, in the quarter.

25 Revenue for the year was almost \$95 million higher than the midpoint of our
26 guidance. These results were due to overperformance in our core business as well as
27 multiple assumptions on external factors that broke our way, such as the sports
28 calendar, the extension of mobile registration, Illinois and better-than-expected
whole percentage in online sports book.

68. On May 7, 2021, the Company issued a press release reporting its Q1 2021 results and
raising its 2021 revenue guidance. The press release stated:

For the three months ended March 31, 2021, DraftKings reported revenue of \$312
million, an increase of 253% compared to \$89 million during the same period in
2020. After giving pro forma effect to the business combination with SBTech
(Global) Limited (“SBTech”) and Diamond Eagle Acquisition Corp. which was
completed on April 23, 2020, as if it had occurred on January 1, 2019, revenue grew
175% compared to the three months ended March 31, 2020.

“DraftKings is off to an outstanding start in 2021,” said Jason Robins, DraftKings’
co-founder, CEO and Chairman of the Board. “We continued to make progress and

1 remain on track with the migration to our own in-house proprietary sports betting
 2 engine, strengthened our content and technology capabilities with the acquisitions of
 3 VSiN and BlueRibbon Software, and invested in further differentiating our product
 offering with the upcoming rollout of social functionality in our DFS and mobile
 Sportsbook apps.”

4 Jason Park, DraftKings’ Chief Financial Officer, added, “Our \$312 million in first
 5 quarter revenue, 114% increase in MUPs and 48% growth in ARPMUP reflect solid
 6 customer acquisition and retention as well as successful launches of mobile sports
 7 betting and iGaming in new states. We are raising our revenue outlook for 2021 due
 to the outperformance of our core business in the first quarter and our expectation for
 continued healthy growth.”

8 69. That same day, the Company hosted an earnings call with investors and analysts to
 9 discuss the Company’s Q1 2021 results (the “Q1 2021 Earnings Call”). During the scripted portion of
 10 the Q1 2021 Earnings Call, Defendant Robins stated:

11 DraftKings is off to an outstanding start in 2021. Revenue for the first quarter
 12 increased 175% year-over-year to 312 million on a pro forma basis. MUPs grew
 13 114% and ARPMUP grew 48%. These results reflect continued over performance of
 14 our core business due to strong customer acquisition and retention as well as the
 successful launches of mobile sports betting and iGaming in Michigan and mobile
 sports betting in Virginia.

15 70. The statements referenced above were materially false and misleading because
 16 Defendants made false and/or misleading statements and/or failed to disclose that: (i) SBTech had a
 17 history of unlawful operations; (ii) accordingly, DraftKings’ merger with SBTech exposed the
 18 Company to dealings in black-market gaming; (iii) the foregoing increased the Company’s regulatory
 19 and criminal risks with respect to these transactions; (iv) as a result of all the foregoing, the Company’s
 20 revenues were derived, in part, from unlawful conduct and thus unsustainable; (v) accordingly, the
 21 benefits of the Business Combination were overstated; and (vi) as a result, the Company’s public
 22 statements were materially false and misleading at all relevant times.

23 **THE TRUTH EMERGES**

24 71. On June 15, 2021, Hindenburg published a report entitled “DraftKings: A \$21 Billion
 25 SPAC Betting It Can Hide Its Black Market Operations.” The report alleged that the Company’s
 26 merger with SBTech exposed DraftKings to dealings in black-market gaming. Specifically, the report
 27 stated:

28 ///

- 1 • SBTech accounted for ~25% of total revenue at the SPAC consummation and
2 was the only positive contributor to operating income, providing both
3 financial stability and technology to the deal.
- 4 • Unbeknownst to investors, DraftKings' merger with SBTech also brings
5 exposure to extensive dealings in black-market gaming, money laundering
6 and organized crime.
- 7 • Based on conversations with multiple former employees, a review of SEC &
8 international filings, and inspection of back-end infrastructure at illicit
9 international gaming websites, we show that SBTech has a long and ongoing
10 record of operating in black markets.
- 11 • We estimate that roughly 50% of SBTech's revenue continues to come from
12 markets where gambling is banned, based on an analysis of DraftKings' SEC
13 filings, conversations with former employees, and supporting documents.

* * *

- 11 • We identified numerous black market clients of DraftKings' "front" entity,
12 through searches on social media and back-end web infrastructure.

* * *

- 13 • DraftKings trades at a ~26x last twelve months (LTM) sales multiple and a
14 ~20x estimated 2021 sales multiple despite (i) no expectation of earnings, for
15 years, (ii) intense competition, and (iii) regulatory risk. The company posted
16 net losses of \$844 million in 2020 and \$346 million last quarter.
- 17 • Insiders have dumped over \$1.4 billion in stock since the company went
18 public a little over a year ago, with SBTech's founder leading the pack,
19 having personally sold ~\$568 million in shares.

* * *

- 20 • We think DraftKings has systematically skirted the law and taken elaborate
21 steps to obfuscate its black market operations. These violations appear to be
22 continuing to this day, all while insiders aggressively cash out amidst the
23 market froth.

72. The Hindenburg report also explained that SBTech entered into Asian black markets in

2014. The report stated:

According to former employees, SBTech's offering struggled to compete against competitors like Kambi, which had a robust team dedicated to analyzing and setting "in-game" betting odds and had more powerful technology. The competition pushed SBTech to seek business in markets where others were unwilling to operate, we were told.

Despite the illegality of sports gambling in major Asian markets, SBTech's own marketing materials suggest it had an expansive Asia-facing business at least as far

back as 2014. SBTech’s website at the time advertised a “powerful turnkey Asian system” that accepted payment in currencies where gambling was clearly illegal.

* * *

Specifically, according to the graphic on its website, SBTech accepted Vietnamese, Dong and Indonesian Rupees – both currencies based in black market sports gambling jurisdictions.

73. The Hindenburg report continued to explain that the owner of SBTech spun out certain of his gambling operations to set up a front entity to mask SBTech’s involvement in black and unregulated markets:

According to a former business partner of SBTech, the prospect of doing business in the U.S. was the trigger for SBTech owner Shalom Meckenzie to spin out certain of his gambling operations to at least two separate entities. The entities were placed under the control of relatives or trusted confidantes and run by many of the same staff.

Shortly after the Supreme Court hearing, on March 19, 2018, SBTech announced that Tom Light, the SVP of business development, was leaving to create a “new blockchain and gambling venture”.

* * *

The venture was unnamed in the press release, but Maltese and Bulgarian corporate records show that Light began creating an entity called BTi days later. [1,2,3] It was later renamed CoreTech.

One former employee who served in a product development role told us BTi/CoreTech was a “front” for SBTech’s illegal or unregulated markets:

“Before SBTech joined with DraftKings, they split the grey market/unregulated...they [Bti] are a separate company marketing their white label solution to Middle East, South America, mostly China and Malaysia. Their technology provider is SBTech. Because SBTech is now on NASDAQ they don’t want Asia or the grey market to give it a bad influence. They want to be clean.”

The same former employee told us that BTi/CoreTech acted as a customer of SBTech, which invoiced BTi/CoreTech, in an apparent effort to put a layer of legal separation between SBTech and its black market end customers. A second former employee, who worked as a data specialist at SBTech for several years, described BTi/CoreTech similarly. When asked how much of BTi/CoreTech’s revenue comes from black or grey markets he said: “I would say almost all of it. Well over 90%”

Despite the small legal market in Asia, DraftKings states in its SEC filings that an unnamed customer focused on Asian markets accounted for 46% of SBTech’s 2019 revenue and 52% of SBTech’s 2020 revenue, but failed to disclose the name of the customer.[1] [Pg. 39, Pg. 40]

1 When asked about this, the former employee speculated "...if it's Asia it will have to
2 be (BTi)...it must be through BTi". To be clear, SBTech has several Asiafacing
customers and "resellers" such as 10Bet, W88, and Gameplay, as we detail further.

3 The opacity of DraftKings' customer relationship disclosures has thus far masked the
4 names of its top customers.

5 The implication either way is that black and unregulated market revenue and
6 profitability, which includes BTi/CoreTech, represented and still represents a major
portion of SBTech's financials since DraftKings went public.

7 The former employee added that the new focus on adding blockchain to the gambling
8 offering was because operators in black markets had requested cryptocurrency
9 options to make moving money easier. Crypto has emerged as the medium of choice
10 for illicit money transfers, given the lack of oversight. BTi/CoreTech was set up
across town from SBTech's office in Sofia, Bulgaria, 4.5 miles (7.2 km) away, per
Bulgarian corporate records. (Emphasis in original.)

11 74. Further, the Hindenburg report explained that, despite SBTech's claims it was separate
12 from BTi/CoreTech, multiple employees and customers described BTi/CoreTech as either an affiliate
13 or subsidiary of SBTech, or used the name BTi interchangeably with SBTech. For example, the
14 Hindenburg report stated:

15 Despite the ostensible separation, many employees seemed to be under the
16 impression that they worked for SBTech.

17 This includes BTi/CoreTech's current CEO, Amir Vaknin (who, according to his
18 LinkedIn, never worked for SBTech). Nonetheless, he announced he was searching
to hire employees for SBTech around the time that BTi/CoreTech was formed.

19 75. The Hindenburg report also indicated that Hindenburg was able to corroborate accounts
20 by former employees who claimed that "the renaming and re-branding of parts of SBTech to BTi to
21 CoreTech – was an effort to separate the entity's 'behind the scenes' black market operations to pave
22 the way for a U.S. deal partner like DraftKings', with its polished and clean exterior." Specifically, the
23 Hindenburg report provided a number of corroborating examples:

24 Example 1: BTi's Sportsbook Is Advertised Through a Site Linked To A Recent
25 Raid on An Alleged Illegal Operator in Thailand

26 * * *

27 Example 2: 12Bet, A Site Tied To Triads And At The Center Of A Swiss Money
28 Laundering Investigation, Advertises Its Use of BTi's Technology

* * *

1 Example 3: Gaming Site Fun88, Linked To An Illegal Gaming Raid In Vietnam,
2 Also Advertises Its Use of BTi's Platform

3 * * *

4 Example 4: SBTech Claimed to Oregon Regulators That Its Customer 10Bet Did Not
5 Derive Revenue From China (A Major Black Market) Using SBTech's Software

6 We Found Multiple Chinese-Facing 10Bet Sites Where Backend Web Infrastructure
7 Demonstrates SBTech's Involvement

8 * * *

9 Example 4 (Cont'd): 10bet, A Sports Betting Firm With Apparent Ongoing
10 Operations in China, Was Launched By SBTech Founder Shalom Meckenzie In Mid-
11 2018, Meckenzie Stepped Down From 10Bet And Transferred His Shares to His
12 Brother To (Once Again) Obfuscate The Connection DraftKings Continues to Do
13 Business With the Entity, Per Its SEC Filings

14 * * *

15 Example 5: SBTech Operated in Iran For Years, According to Multiple Former
16 Employees, Contrary to Its Representations to Oregon State Regulators

17 76. In its conclusion, the Hindenburg report further elaborated on SBTech's unlawful
18 activity:

19 One issue with partnering with black market betting operators is that such businesses
20 are not just engaged in illegal betting. These operators almost by definition are engaged
21 in money laundering, and often additional lines of underground business activity.

22 As one former employee told us succinctly, SBTech founder Meckenzie and his affiliate
23 entities have "sold to plenty of mobs".

24 The same former employee explained that DraftKings and its SPAC sponsors must have
25 either known the issues with SBTech's black market operations or were grossly
26 negligent in their diligence:

27 "I would be really, really, really surprised if they didn't know. In fact, it would be
28 really, really amateur of them if they didn't investigate that.

Presumably they knew and [...] helped facilitate hiding it or turned a blind eye to it...
but they must have known."

DraftKings has never identified the nature of its BTi/CoreTech relationship in any of its
SEC filings – not as an affiliate or subsidiary of SBTech or in any other way as relevant
to DraftKings' SPAC combination with SBTech. It also has not provided transparency
regarding the markets SBTech and its other "resellers" and affiliates operate in, and
their respective contributions to the public company.

1 Given the importance of SBTech to DraftKings' top and bottom-line, it is virtually
 2 impossible to fathom that DraftKings was and continues to remain unaware of its
 ongoing relationship with BTi/CoreTech and its illicit operators.

3 Yet rather than disclose anything about these relationships, the company instead
 4 appears to have created a complex web of misinformation to conceal them. (Emphasis
 in original.)

5 77. Following publication of the Hindenburg report, the Company's stock price fell \$2.11
 6 per share, or 4.17%, to close at \$48.51 per share on June 15, 2021.

7 **DAMAGES TO THE COMPANY**

8 78. As a direct and proximate result of Defendants' misconduct, the Company has lost and
 9 will continue to lose and expend many millions of dollars.

10 79. Such expenditures include, but are not limited to, the fees associated with the Securities
 11 Class Actions filed against the Company, its CEO and CFO, and DEAC's former CEO and CFO;
 12 defending against the SEC subpoena and any internal investigations; and amounts paid to outside
 13 lawyers, accountants, and investigators in connection thereto.

14 80. Additionally, these expenditures include, but are not limited to, unjust compensation,
 15 benefits, and other payments provided to Defendants who breached their fiduciary duties to the
 16 Company.

17 81. As a direct and proximate result of the Individual Defendants' conduct, the Company
 18 has also suffered and will continue to suffer a loss of reputation and goodwill, and a "liar's discount"
 19 that will plague the Company's stock in the future due to the Company's and their misrepresentations
 20 and the Individual Defendants' breaches of fiduciary duties and unjust enrichment.

21 **DUTIES OF THE DIRECTOR DEFENDANTS**

22 82. By reason of their positions as officers and/or directors of the Company, and because of
 23 their ability to control the business and corporate affairs of the Company, the Director Defendants
 24 owed the Company and its investors the fiduciary obligations of trust, loyalty, and good faith. The
 25 obligations required the Director Defendants to use their utmost abilities to control and manage the
 26 Company in an honest and lawful manner. The Director Defendants were and are required to act in
 27 furtherance of the best interests of the Company and its investors.

28 ///

1 83. Each director of the Company owes to the Company and its investors the fiduciary duty
2 to exercise loyalty, good faith, and diligence in the administration of the affairs of the Company and in
3 the use and preservation of its property and assets. In addition, as officers and/or directors of a publicly
4 held company, the Director Defendants had a duty to promptly disseminate accurate and truthful
5 information regarding the Company's operations, finances, and financial condition, as well as present
6 and future business prospects, so that the market price of the Company's stock would be based on
7 truthful and accurate information.

8 84. To discharge their duties, the officers and directors of the Company were required to
9 exercise reasonable and prudent supervision over the management, policies, practices, and controls of
10 the affairs of the Company. By virtue of such duties, the officers and directors of the Company were
11 required to, among other things:

12 (a) ensure that the Company complied with its legal obligations and
13 requirements, including acting only within the scope of its legal authority and disseminating
14 truthful and accurate statements to the SEC and the investing public;

15 (b) conduct the affairs of the Company in an efficient, businesslike manner so
16 as to make it possible to provide the highest quality performance of its business, to avoid
17 wasting the Company's assets, and to maximize the value of the Company's stock;

18 (c) properly and accurately guide investors and analysts as to the true financial
19 condition of the Company at any given time, including making accurate statements about the
20 Company's business prospects, and ensuring that the Company maintained an adequate system
21 of financial controls such that the Company's financial reporting would be true and accurate at
22 all times;

23 (d) remain informed as to how the Company conducted its operations, and,
24 upon receipt of notice or information of imprudent or unsound conditions or practices, make
25 reasonable inquiries in connection therewith, take steps to correct such conditions or practices,
26 and make such disclosures as necessary to comply with federal and state securities laws;

27 ///

28 ///

1 (e) ensure that the Company was operated in a diligent, honest, and prudent
 2 manner in compliance with all applicable federal, state and local laws, and rules and
 3 regulations; and

4 (f) ensure that all decisions were the product of independent business judgment
 5 and not the result of outside influences or entrenchment motives.

6 85. Each Director Defendant, by virtue of his or her position as a director and/or officer,
 7 owed to the Company and to its shareholders the fiduciary duties of loyalty, good faith, and the
 8 exercise of due care and diligence in the management and administration of the affairs of the Company,
 9 as well as in the use and preservation of its property and assets. The conduct of the Director
 10 Defendants complained of herein involves a knowing and culpable violation of their obligations as
 11 directors and officers of the Company, the absence of good faith on their part, and a reckless disregard
 12 for their duties to the Company and its shareholders that the Director Defendants were aware, or should
 13 have been aware, posed a risk of serious injury to the Company.

14 86. The Director Defendants breached their duties of loyalty and good faith by causing the
 15 Company to issue false and misleading statements concerning the business results and prospects of the
 16 Company. As a result, the Company has expended, and will continue to expend, significant sums of
 17 money related to investigations and lawsuits.

18 **DERIVATIVE AND DEMAND FUTILITY ALLEGATIONS**

19 87. Plaintiff brings this action derivatively in the right and for the benefit of the Company to
 20 redress injuries suffered and to be suffered as a direct and proximate result of the breaches of fiduciary
 21 duties by the Director Defendants.

22 88. Plaintiff will adequately and fairly represent the interests of the Company in enforcing
 23 and prosecuting its rights and retained counsel competent and experienced in derivative litigation.

24 89. During the illegal and wrongful course of conduct at the Company and to the present,
 25 the Board consisted of Defendants Robins, Sloan, Kalish, Liberman, Levin, Meckenzie, J. Moore, R.
 26 Moore, Mosley, Murray, Nada, Salter and Walden. Because of the facts set forth throughout this
 27 Complaint, demand on the Company Board to institute this action is not necessary because such a
 28 demand would have been a futile and useless act.

1 90. The Director Defendants either knew or should have known of the false and misleading
2 statements that were issued on the Company's behalf and took no steps in a good faith effort to prevent
3 or remedy that situation.

4 91. The Director Defendants (or at the very least a majority of them) cannot exercise
5 independent objective judgment about whether to bring this action or whether to vigorously prosecute
6 this action. For the reasons that follow, and for reasons detailed elsewhere in this complaint, Plaintiff
7 has not made (and should be excused from making) a pre-filing demand on the Board to initiate this
8 action because making a demand would be a futile and useless act.

9 92. Each of the Director Defendants approved and/or permitted the wrongs alleged herein to
10 have occurred and participated in efforts to conceal or disguise those wrongs from the Company's
11 stockholders or recklessly and/or with gross negligence disregarded the wrongs complained of herein
12 and are therefore not disinterested parties.

13 93. Each of the Director Defendants authorized and/or permitted the false statements to be
14 disseminated directly to the public and made available and distributed to shareholders, authorized
15 and/or permitted the issuance of various false and misleading statements, and are principal beneficiaries
16 of the wrongdoing alleged herein, and thus, could not fairly and fully prosecute such a suit even if they
17 instituted it.

18 94. Each of the Director Defendants received payments, benefits, stock options, and other
19 emoluments by virtue of their membership on the Board and their control of the Company.

20 95. Demand is excused as to all of the Director-Defendants because each one of them faces,
21 individually and collectively, a substantial likelihood of liability as a result of the scheme they engaged
22 in knowingly or recklessly to make and/or cause the Company to make false and misleading statements
23 and omissions of material facts, while seven of them conducted insider sales for proceeds of
24 approximately \$825.3 million, which renders them unable to impartially investigate the charges and
25 decide whether to pursue action against themselves and the other perpetrators of the scheme.

26 **Defendant Robins**

27 96. Because of his CEO management position with the Company, Defendant Robins is not
28 independent.

1 97. The Company provides Defendant Robins with his principal occupation, and he receives
2 handsome compensation for his services. Defendant Robins was responsible for most of the false and
3 misleading statements and omissions that were made, including those contained in the Company's SEC
4 filings referenced herein, many of which he either personally made or signed off on.

5 98. Defendant Robins is also a defendant in the securities class actions entitled *Hoorn v.*
6 *DraftKings Inc., et al.*, Case 1:21-cv-06497 (S.D.N.Y.) and *Rodriguez v. DraftKings Inc., et al.*, Case
7 1:21-cv-05739 (the "Securities Class Actions") and faces a substantial likelihood of liability; therefore,
8 demand on Defendant Robins is futile.

9 **Defendant Kalish**

10 99. Defendant Kalish cofounded Old DK in 2011 and served as its Chief Revenue Officer
11 from 2014 to 2019, after which he was appointed President, DraftKings North America. As the
12 Company admits, he is a non-independent director. The Company provides Defendant Kalish with his
13 principal occupation for which he receives significant compensation, including over \$197,235,333 in
14 compensation for the 2020 Fiscal Year alone. Before the truth emerged regarding the Illicit Operations,
15 Defendant Kalish sold \$3,110,175.72 of Company stock at artificially inflated prices based on inside
16 information.

17 **Defendant Levin**

18 100. Defendant Levin served as a director of Old DK from December 2013 until the Merger
19 and thus contributed to the consummation of the Merger, which exposed the Company to the Illicit
20 Operations. Defendant Levin is currently a member of the Nominating and Corporate Governance
21 Committee. Defendant Levin received and continues to receive substantial compensation for his
22 service on the Board, including \$375,893 in the 2020 Fiscal Year.

23 **Defendant Liberman**

24 101. Defendant Liberman cofounded Old DK in 2011 and served as its Chief Operations
25 Officer from 2015 until December 2019, when he was appointed President, Global Technology and
26 Product. The Company admits that he is a non-independent director. Defendant Liberman currently
27 sits on the Compliance Committee. The Company provides Defendant Liberman with his principal
28 occupation for which he receives handsome compensation, including \$197,220,479 in compensation

1 for the 2020 Fiscal Year alone. Before the truth emerged regarding the Illicit Operations, Defendant
2 Liberman sold \$4,574,700 of Company stock at artificially inflated prices based on inside information.

3 **Defendant Meckenzie**

4 102. Defendant Meckenzie is the founder of SBTech and served as its director until May
5 2014. Defendant Meckenzie also served as a member of the board of directors of a subsidiary of
6 SBTech from 2003 until 2018. The Company admits that he is a non-independent director. Defendant
7 Meckenzie currently serves as a member of the Compensation Committee, and he received and
8 continues to receive substantial compensation for his service on the Board, including \$373,618 in the
9 2020 Fiscal Year. SBTech's engagement in the Illicit Operations and its involvement with
10 BTi/CoreTech form the core of the allegations in this complaint, and therefore Defendant Meckenzie,
11 due to his longstanding history with SBTech, cannot dispassionately investigate the allegations made
12 herein. Further, companies owned by Defendant Meckenzie or his brother have repeatedly engaged in
13 related-party transactions with SBTech, making it exceedingly unlikely that Defendant Meckenzie
14 would launch any investigation into the Illicit Operations with the potential to expose how Defendant
15 Meckenzie has profited at SBTech's expense. Moreover, before the truth emerged regarding the Illicit
16 Operations, Defendant Meckenzie sold \$387,403,543 of Company stock at artificially inflated prices
17 based on inside information.

18 **Defendant J. Moore**

19 103. Defendant J. Moore currently serves as a member of the Nominating and Corporate
20 Governance Committee, the Compliance Committee, and the Compensation Committee. Defendant
21 Moore received and continues to receive substantial compensation for her service on the Board,
22 including \$199,979 in the 2020 Fiscal Year. As a trusted Company director with significant
23 responsibilities on Board committees, she conducted little, if any, oversight of the scheme to cause the
24 Company to make false and misleading statements, consciously disregarded her duties to monitor
25 internal controls over reporting and engagement in the scheme, and consciously disregarded her duties
26 to protect corporate assets. For these reasons, Defendant J. Moore breached her fiduciary duties, faces
27 a substantial likelihood of liability, is not independent or disinterested, and thus demand upon her is
28 futile and, therefore, excused.

Defendant R. Moore

104. Defendant R. Moore currently serves as a member of the Audit Committee and the Compensation Committee. Defendant R. Moore received and continues to receive substantial compensation for his service on the Board, including \$376,790 in the 2020 Fiscal Year. Before the truth emerged regarding the Illicit Operations, Defendant R. Moore sold \$50,830,000 of Company stock at artificially inflated prices based on inside information.

Defendant Mosley

105. Defendant Mosley currently serves as a member of the Audit Committee and the Nominating and Corporate Governance Committee. Defendant Mosley received and continues to receive substantial compensation for her service on the Board, including \$199,979 in the 2020 Fiscal Year.

Defendant Murray

106. Defendant Murray currently serves as a member of the Audit Committee. Defendant Murray received and continues to receive substantial compensation for his service on the Board, including \$378,136 in the 2020 Fiscal Year. Before the truth emerged regarding the Illicit Operations, Defendant Murray sold \$78,579,316 of Company stock at artificially inflated prices based on inside information.

Defendant Nada

107. Defendant Nada currently serves as a member of the Audit Committee and the Compensation Committee. Defendant Nada received and continues to receive substantial compensation for his service on the Board, including \$394,656 in the 2020 Fiscal Year. Before the truth emerged regarding the Illicit Operations, Defendant Nada sold \$48,121,370.96 of Company stock at artificially inflated prices based on inside information.

Defendant Salter

108. Defendant Salter currently serves as a member of the Compliance Committee. Defendant Salter received and continues to receive substantial compensation for his service on the Board, including \$389,836 in the 2020 Fiscal Year. Before the truth emerged regarding the Illicit

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1 Operations, Defendant Salter sold \$252,755,834 of Company stock at artificially inflated prices based
2 on inside information.

3 **Defendant Sloan**

4 109. Defendant Sloan was a founding investor of DEAC and currently serves as Vice
5 Chairman of the Company's Board, in addition to being a member of the Board's Nominating and
6 Corporate Governance Committee. Defendant Sloan received and continues to receive substantial
7 compensation for his service on the Board, including \$375,445 in the 2020 Fiscal Year. Defendant
8 Sloan has cofounded seven SPACs with his partners, raising aggregate gross proceeds of over \$4
9 billion. He was also a leading orchestrator of the Merger and is thus exceedingly unlikely to initiate an
10 investigation into the propriety of the Merger or any of the misconduct alleged herein. Moreover, any
11 revelation that the Merger was tainted by misconduct would negatively affect Defendant Sloan's ability
12 to execute future SPAC deals, disrupting a business strategy that has proved to be enormously
13 profitable to him personally.

14 **Defendant Walden**

15 110. Defendant Walden currently serves as a member of the Compliance Committee and the
16 Nominating and Corporate Governance Committee. Defendant Walden received and continues to
17 receive substantial compensation for her service on the Board, including \$375,445 in the 2020 Fiscal
18 Year. As a trusted Company director, she conducted little, if any, oversight of the scheme to cause the
19 Company to make false and misleading statements, consciously disregarded her duties to monitor
20 internal controls over reporting and engagement in the scheme, and consciously disregarded her duties
21 to protect corporate assets. For these reasons, Defendant Walden breached her fiduciary duties, faces a
22 substantial likelihood of liability, is not independent or disinterested, and thus demand upon her is futile
23 and, therefore, excused.

24 **ADDITIONAL REASONS THAT DEMAND ON THE BOARD IS FUTILE**

25 111. Certain Defendants have longstanding business and personal relationships with each
26 other that preclude them from acting independently and in the best interests of the Company and the
27 shareholders. For example, Defendants Robins, Kalish, and Liberman cofounded Old DK in December
28 2011. Additionally, Defendants Robins, Kalish, Liberman, Meckenzie, Salter, Sloan all worked

1 together—along with Defendants Sagansky, Baker, and Park—to consummate the Merger. In
 2 particular, Defendants Meckenzie, Robins, and Sloan first met on June 15, 2019 as respective leaders of
 3 SBTech, Old DK, and DEAC to initiate the plan that led to the April 2020 Merger. Defendant Sloan
 4 has cofounded seven SPACs with his business partners, which include Defendants Sagansky and
 5 Baker, raising aggregate gross proceeds of over \$4 billion. Due to Defendant Sloan’s substantial
 6 history of highly profitable deals with Defendants Sagansky and Baker, Defendant Sloan is unlikely to
 7 initiate suit against Defendants Sagansky and Baker. These conflicts of interest precluded Defendants
 8 from adequately monitoring the Company’s operations and internal controls and calling into question
 9 Defendants’ conduct. Thus, demand upon Defendants would be futile.

10 **Defendants R. Moore, Mosley, Murray and Nada**

11 112. Defendants R. Moore, Mosley, Murray and Nada (the “Audit Committee Defendants”)
 12 served as members of the Audit Committee during the Relevant Period. Pursuant to the Company’s
 13 Audit Committee Charter, the Audit Committee Defendants are responsible for, *inter alia*, overseeing
 14 and reviewing the Company’s accounting and financial services, internal operating controls, and ethical
 15 standards, as well as ensuring the independence of auditors, the integrity of management, and the
 16 adequacy of disclosures to shareholders. The Audit Committee Defendants failed to adequately
 17 oversee the Company’s reporting processes, failed to identify or remedy deficiencies with the
 18 Company’s internal controls, and failed prevent the Company from issuing false and misleading
 19 financial statements with the SEC. The Audit Committee Defendants breached their fiduciary duties,
 20 are not disinterested, and demand is excused as to them.

21 **Defendants Liberman, Salter, and Walden**

22 113. Defendants Liberman, Salter and Walden (the “Compliance Committee Defendants”)
 23 served as members of the Compliance Committee during the Relevant Period. Pursuant to the
 24 Company’s Compliance Committee Charter, the Compliance Committee Defendants are responsible
 25 for, *inter alia*, reviewing and analyzing nonfinancial laws and regulations applicable to the Company
 26 and taking steps to ensure the Company remains in compliance with such laws and regulations. The
 27 Compliance Committee Defendants failed to adequately oversee the Company’s reporting processes,
 28 failed to identify or remedy deficiencies with the Company’s internal controls, and failed prevent the

1 Company from issuing false and misleading financial statements with the SEC. The Compliance
 2 Committee Defendants breached their fiduciary duties, are not disinterested, and demand is excused as
 3 to them.

4 **Defendants Kalish and Liberman**

5 114. Demand in this case is further excused because the Defendants are beholden to and
 6 controlled by Defendant Robins, who is cofounder, CEO, Chairman, and a controlling shareholder with
 7 beneficial ownership of over 91.2% of the Company's voting power as of March 1, 2021. As a result,
 8 Defendants cannot impartially consider a demand against Defendant Robins, an interested, primary
 9 wrongdoer, as they are dependent on him for their continued employment with the Company and the
 10 lucrative compensation that goes with that; this is particularly true of Defendants Kalish and Liberman,
 11 who are also executives at DraftKings. Thus, Defendants, and in particular Defendants Kalish and
 12 Liberman, are unable to evaluate a demand with disinterest or independence as a result of Defendant
 13 Robins' control over them.

14 **COUNT I**

15 **(Against Defendants Robins, Park, Sagansky, and Baker For Violations Of**
 16 **Sections 10(b) And 21D Of The Exchange Act)**

17 115. Plaintiff incorporates by reference and realleges each and every allegation contained
 18 above, as though fully set forth herein.

19 116. The Company and certain officers of the Company are named as defendants in the
 20 Securities Class Action, which assert claims under the federal securities laws for violations of Sections
 21 10(b) and 21D of the Exchange Act. If and when the Company is found liable in the Securities Class
 22 Actions for these violations of law, the Company's liability will be in whole or in part due to
 23 Defendants Robins, Park, Sagansky, and Baker willful and/or reckless violations of their obligations as
 24 officers and directors of the Company.

25 117. Moreover, through their positions of control and authority as officers of the Company,
 26 Defendants Robins, Park, Sagansky, and Baker were able to and did, directly and/or indirectly, exercise
 27 control over the business and corporate affairs of the Company, including the wrongful acts described
 28 in the Securities Class Action and herein.

118. As such, Defendants Robins, Park, Sagansky, and Baker is liable under 15 U.S.C. § 78j(b), which creates a private right of action for contribution, and Section 21D of the Exchange Act, 15 U.S.C. § 78u-4(f), which governs the application of a private right of action for contribution arising out of violations of the Exchange Act.

COUNT II

(Against The Director Defendants For Breach Of Fiduciary Duty)

119. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

120. The Director Defendants owed the Company fiduciary obligations. By reason of their fiduciary relationships, the Director Defendants owed the Company the highest obligation of good faith, fair dealing, loyalty, and due care.

121. The Director Defendants violated and breached their fiduciary duties of care, loyalty, reasonable inquiry, and good faith.

122. The Director Defendants engaged in a sustained and systematic failure to properly exercise their fiduciary duties. Among other things, the Director Defendants breached their fiduciary duties of loyalty and good faith by permitting the use of inadequate practices and procedures to guide the truthful dissemination of Company news to the investing public and to the Company's shareholders, allowing or permitting false and misleading statements to be disseminated in the Company's SEC filings and other disclosures and, otherwise failing to ensure that adequate internal controls were in place regarding the serious business reporting issues and deficiencies described above. These actions could not have been a good faith exercise of prudent business judgment to protect and promote the Company's corporate interests.

123. As a direct and proximate result of the Director Defendants' failure to perform their fiduciary obligations, the Company has sustained significant damages. As a result of the misconduct alleged herein, the Director Defendants are liable to the Company.

124. As a direct and proximate result of the Director Defendants' breach of their fiduciary duties, the Company has suffered damage, not only monetarily, but also to its corporate image and goodwill. Such damage includes, among other things, costs associated with defending and/or settling

1 securities lawsuits and governmental investigations, severe damage to the share price of the Company's
2 stock, resulting in an increased cost of capital, and reputational harm.

3 **COUNT III**

4 **(Against The Director Defendants For Waste Of Corporate Assets)**

5 125. Plaintiff incorporates by reference and realleges each and every allegation contained
6 above, as though fully set forth herein.

7 126. The wrongful conduct alleged regarding the issuance of false and misleading statements
8 was continuous, connected, and on-going throughout the time period in issue. It resulted in continuous,
9 connected, and ongoing harm to the Company.

10 127. As a result of the misconduct described above, the Director Defendants wasted corporate
11 assets by, *inter alia*: (a) paying excessive compensation, bonuses, and termination payments to certain
12 of its executive officers; (b) awarding self-interested stock options to certain officers and directors; and
13 (c) incurring potentially millions of dollars of legal liability and/or legal costs to defend and/or settle
14 actions addressing Defendants' unlawful actions.

15 128. As a result of the waste of corporate assets, the Director Defendants are liable to the
16 Company.

17 129. Plaintiff, on behalf of the Company, has no adequate remedy at law.

18 **REQUEST FOR RELIEF**

19 **WHEREFORE**, Plaintiff demands judgment as follows:

20 A. Against all Defendants and in favor of the Company for the amount of damages
21 sustained by the Company as a result of Defendants' breaches of fiduciary duties;

22 B. Directing the Company to take all necessary actions to reform and improve its corporate
23 governance and internal procedures to comply with applicable laws and to protect the Company and its
24 shareholders from a repeat of the damaging events described herein, including, but not limited to,
25 putting forward for shareholder vote resolutions for amendments to the Company's By-Laws or
26 Articles of Incorporation and taking such other action as may be necessary to place before shareholders
27 for a vote a proposal to strengthen the Board's supervision of operations and develop and implement
28 procedures for greater shareholder input into the policies and guidelines of the Board;

1 C. Awarding to the Company restitution from Defendants, and each of them, and ordering
2 disgorgement of all profits, benefits and other compensation obtained by Defendants;

3 D. Awarding to Plaintiff the costs and disbursements of the action, including reasonable
4 attorneys' fees, accountants' and experts' fees, costs, and expenses; and

5 E. Granting such other and further relief as the Court deems just and proper.

6 **DEMAND FOR TRIAL BY JURY**

7 Plaintiff demands a trial by jury on all issues so triable.

8 DATED this 21st day of October 2021.

9 **MATTHEW L. SHARP, LTD.**

10 /s/ Matthew L. Sharp

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26 ***Counsel for Plaintiff***

VERIFICATION

I, JORDAN JOHN WALK, am a plaintiff in the within action. I have reviewed the allegations made in this Shareholder Derivative Complaint, know the contents thereof, and authorize its filing. To those allegations of which I have personal knowledge, I believe those allegations to be true. As to those allegations of which I do not have personal knowledge, I rely upon my counsel and their investigation and believe them to be true.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed this 18 day of October 2021



JORDAN JOHN WALK